

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 1648**

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**Introduced by Assembly Member Leno**

February 23, 2007

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An act to amend ~~Sections 832.5 and~~ *Section 832.7* of the Penal Code, relating to peace officer records.

### LEGISLATIVE COUNSEL’S DIGEST

AB 1648, as amended, Leno. Peace officer records.

Existing law generally regulates the confidentiality of various peace officer records, including records pertaining to disciplinary matters, as specified.

~~This would state the intent of the Legislature to abrogate the decision of the California Supreme Court in Copley Press v. Superior Court. The bill would provide that “department” or “agency” means the department or agency that directly employs peace or custodial officers and which has established a procedure to investigate complaints by members of the public against its personnel, and that is primarily responsible for the initial investigation of the complaints and the maintenance of its investigative records. The~~ *This* bill would provide that the terms *confidentiality of peace officer records, as specified, do* ~~does not include any other~~ *apply to specified government body bodies that reviews review* the investigations, findings, or employment actions of a department or agency. The bill would make specified information in certain disciplinary records pertaining to peace officers available to the public, as specified.

*This bill would state the intent of the Legislature to abrogate the decision of the California Supreme Court in Copley Press v. Superior Court.*

By imposing additional duties on local law enforcement agencies in connection with providing discipline records of peace officers, as specified, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 832.5 of the Penal Code is amended to~~  
2     ~~read:~~  
3     ~~832.5. (a) (1) Each department or agency in this state that~~  
4     ~~employs peace officers shall establish a procedure to investigate~~  
5     ~~complaints by members of the public against the personnel of these~~  
6     ~~departments or agencies, and shall make a written description of~~  
7     ~~the procedure available to the public.~~  
8     ~~(2) Each department or agency that employs custodial officers;~~  
9     ~~as defined in Section 831.5, may establish a procedure to~~  
10    ~~investigate complaints by members of the public against those~~  
11    ~~custodial officers employed by these departments or agencies;~~  
12    ~~provided however, that any procedure so established shall comply~~  
13    ~~with the provisions of this section and with the provisions of~~  
14    ~~Section 832.7.~~  
15    ~~(b) Complaints and any reports or findings relating to these~~  
16    ~~complaints shall be retained for a period of at least five years. All~~  
17    ~~complaints retained pursuant to this subdivision may be maintained~~  
18    ~~either in the peace or custodial officer's general personnel file or~~  
19    ~~in a separate file designated and maintained by the department or~~  
20    ~~agency as provided by department or agency policy, in accordance~~  
21    ~~with all applicable requirements of law. However, prior to any~~  
22    ~~official determination regarding promotion, transfer, or disciplinary~~

1 ~~action by an officer's employing department or agency, the~~  
2 ~~complaints described by subdivision (c) shall be removed from~~  
3 ~~the officer's general personnel file and placed in separate file~~  
4 ~~designated by the department or agency, in accordance with all~~  
5 ~~applicable requirements of law.~~

6 ~~(e) Complaints by members of the public that are determined~~  
7 ~~by the peace or custodial officer's employing agency to be~~  
8 ~~frivolous, as defined in Section 128.5 of the Code of Civil~~  
9 ~~Procedure, or unfounded or exonerated, or any portion of a~~  
10 ~~complaint that is determined to be frivolous, unfounded, or~~  
11 ~~exonerated, shall not be maintained in that officer's general~~  
12 ~~personnel file. However, these complaints shall be retained in~~  
13 ~~other, separate files that shall be deemed personnel records for~~  
14 ~~purposes of the California Public Records Act (Chapter 3.5~~  
15 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~  
16 ~~Government Code) and Section 1043 of the Evidence Code.~~

17 ~~(1) Management of the peace or custodial officer's employing~~  
18 ~~agency shall have access to the files described in this subdivision.~~

19 ~~(2) Management of the peace or custodial officer's employing~~  
20 ~~agency shall not use the complaints contained in these separate~~  
21 ~~files for punitive or promotional purposes except as permitted by~~  
22 ~~subdivision (f) of Section 3304 of the Government Code.~~

23 ~~(3) Management of the peace or custodial officer's employing~~  
24 ~~agency may identify any officer who is subject to the complaints~~  
25 ~~maintained in these files which require counseling or additional~~  
26 ~~training. However, if a complaint is removed from the officer's~~  
27 ~~personnel file, any reference in the personnel file to the complaint~~  
28 ~~or to a separate file shall be deleted.~~

29 ~~(d) As used in this section, the following definitions apply:~~

30 ~~(1) "General personnel file" means the file maintained by the~~  
31 ~~agency containing the primary records specific to each peace or~~  
32 ~~custodial officer's employment, including evaluations, assignments,~~  
33 ~~status changes, and imposed discipline.~~

34 ~~(2) "Unfounded" means that the investigation clearly established~~  
35 ~~that the allegation is not true.~~

36 ~~(3) "Exonerated" means that the investigation clearly established~~  
37 ~~that the actions of the peace or custodial officer that formed the~~  
38 ~~basis for the complaint are not violations of law or department~~  
39 ~~policy.~~

1     ~~(4) “Department” or “agency” means the department or agency~~  
2     ~~that directly employs peace or custodial officers and which has~~  
3     ~~established a procedure to investigate complaints by members of~~  
4     ~~the public against its personnel pursuant to subdivision (a), and~~  
5     ~~that is primarily responsible for the initial investigation of the~~  
6     ~~complaints and the maintenance of its investigative records. The~~  
7     ~~terms do not include any other government body that reviews the~~  
8     ~~investigations, findings, or employment actions of a department~~  
9     ~~or agency.~~

10    ~~(e) It is the intent of the Legislature by amendments to this~~  
11    ~~section at the 2007–08 Regular Session to abrogate the holding of~~  
12    ~~the California Supreme Court decision in Copley Press v. Superior~~  
13    ~~Court (2006) 39 Cal.4th 1272, and to restore public access to peace~~  
14    ~~officer records and to meetings and hearings that were open to the~~  
15    ~~public prior to that decision.~~

16    ~~SEC. 2.~~

17    ~~SECTION 1.~~ Section 832.7 of the Penal Code is amended to  
18    ~~read:~~

19    ~~832.7. (a) (1) Peace officer or custodial officer personnel~~  
20    ~~records and records maintained by any state or local agency~~  
21    ~~pursuant to Section 832.5, or information obtained from these~~  
22    ~~records, are confidential and shall not be disclosed in any criminal~~  
23    ~~or civil proceeding except by discovery pursuant to Sections 1043~~  
24    ~~and 1046 of the Evidence Code. This section shall not apply to~~  
25    ~~investigations or proceedings concerning the conduct of peace~~  
26    ~~officers or custodial officers, or an agency or department that~~  
27    ~~employs those officers, conducted by a grand jury, a district~~  
28    ~~attorney’s office, or the Attorney General’s office, civilian review~~  
29    ~~boards, personnel boards, Police Commissions, or civil service~~  
30    ~~commissions.~~

31    ~~(2) It is the intent of the Legislature in amending this section at~~  
32    ~~the 2007–08 regular session to abrogate the holding of the~~  
33    ~~California Supreme Court decision in Copley v. Superior Court~~  
34    ~~(2006) 39 Cal.4th 1272 and to restore public access to peace~~  
35    ~~officer records and to meetings and hearings that were open to~~  
36    ~~the public prior to that decision.~~

37    ~~(b) Notwithstanding subdivision (a), a department or agency~~  
38    ~~shall release to the complaining party a copy of his or her own~~  
39    ~~statements at the time the complaint is filed.~~

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e) Notwithstanding subdivision (a), with respect to each complaint charge, disciplinary matter, or internal investigation ~~that results in either discipline, a sustained complaint or charge, or a finding that an officer's conduct was out of policy, where the discipline imposed is either suspension, demotion, removal, or other separation of the peace officer from service with the department~~ a department or agency that employs peace officers or custodial officers shall release:

- (1) The name and badge number of the subject officer.
- (2) The name and current address of the complainant, unless the complainant requests that they be kept confidential.
- (3) A summary of the factual allegations contained in the complaint or other charging document.
- (4) The charges brought against the officer.
- (5) The factual findings with respect to the conduct at issue.
- (6) The discipline imposed or corrective action taken.

(f) Notwithstanding subdivision (a), in cases in which a civilian review board or other government body outside the department or agency recommends imposition of discipline or makes or

1 recommends a finding that an officer's conduct was out of policy  
2 or that a complaint was founded, and that finding is overturned or  
3 the recommendation is not followed by the department or agency  
4 that employs the peace officer, the department or agency may, in  
5 its discretion, release any information already released by the  
6 outside body, as well as a summary of the grounds for overturning  
7 the outside body's finding or not following its recommendation.

8 (g) (1) The department or agency shall provide written  
9 notification to the complaining party of the disposition of the  
10 complaint within 30 days of the disposition.

11 (2) The notification described in this subdivision shall not be  
12 conclusive or binding or admissible as evidence in any separate  
13 or subsequent action or proceeding brought before an arbitrator,  
14 court, or judge of this state or the United States.

15 (h) Nothing in this section shall affect the discovery or disclosure  
16 of information contained in a peace or custodial officer's personnel  
17 file pursuant to Section 1043 of the Evidence Code.

18 (i) Information disclosable pursuant to this section shall be made  
19 available upon request pursuant to Section 6253 of the Government  
20 Code.

21 ~~SEC. 3.~~

22 *SEC. 2.* If the Commission on State Mandates determines that  
23 this act contains costs mandated by the state, reimbursement to  
24 local agencies and school districts for those costs shall be made  
25 pursuant to Part 7 (commencing with Section 17500) of Division  
26 4 of Title 2 of the Government Code.